



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

SW

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,815	10/14/2003	Lee W. Squyres	TED-PT002.1	5120
3624	7590	12/03/2004	EXAMINER	
			SELF, SHELLEY M	
		ART UNIT		PAPER NUMBER
		3725		

DATE MAILED: 12/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/685,815	SQUYRES, LEE W.
	Examiner Shelley Self	Art Unit 3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 08 November 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 2-22 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 1-7 and 9 is/are allowed.
 6) Claim(s) 8 and 16-22 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 14 October 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 8, 2004 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 8, 15, 21, 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to claims 8 and 18, it is unclear what is meant by, " brand has been folded to at least the diameter of said first tree. It is unclear as to whether or not the tree branch is folded to the size of the diameter of the first frame or if the tree branch is folded to the tree such that the tree and branch are within the first frame. Clarification is required.

With regard to claim 21, there is insufficient antecedent basis for the term, "*the angular extent*". Correction is required.

Claims 15 and 22 are particular confusing in that they appear to change/contradict the structure of that recited in the parent claims 2 and 16. For example, claims 2 and 16, state, "...*a first motor engaging and driving said second frame and string dispenser...*" ; claims 15 and 22, state, "*a second motor engaging and driving said second frame and strong dispenser...*" Does the second motor take the place of the first? Or are the two motors used jointly to drive the second frame and string dispenser. Clarification is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crews (4,619,193). With regard to claims 16 and 20, Crew discloses an apparatus for baling a standing tree comprising: a base (fig. 1), first, second and third annular frames (20, 21, 37, 48) having different diameters (fig. 2-4), a string dispenser (50) fixed to an annular frame, a first motor engaging and driving an annular frame and string dispenser (col. 3, lines 66-68 to col. 4, lines 1-6) and means on said base for connecting said apparatus to an elevateable support (fig. 1). Crew does not disclose the dispenser fixed to the second frame, however the mere rearrangement of elements does not impart patentability. It would have been obvious to one having ordinary skill in the art at the time of the invention to rearrange the dispenser to be connected to the second

Art Unit: 3725

frame, below the first annular frame, because merely rearranging parts of an invention involves only routine skill in that. See *In re Japikse*, 86 USPQ 70.

With regard to claims 17 and 18, Crew discloses first and second annular frames contacting radiating arms of the tree and folding the arms upwardly and inwardly when the apparatus encircles the base of the tree trunk and traverses vertically upwardly to the top of the tree, wherein the dispenser does not dispend string on to a branch until the branch has been folded.

With regard to claim 19, Crew discloses at least one retractable arcuate section that moves between an open and closed position (fig. 6).

Allowable Subject Matter

Claims 2-7 and 9-14 are allowed.

Response to Arguments

Applicant's arguments filed November 8, 2004 have been carefully considered but they are not persuasive. Applicant argues the criticality of structure not positively recited. For example, Applicant's arguments are drawn to the failure of prior art reference Zacharias to disclose a permanent arcuate opening. However independent claim 16 states only an arcuate opening and is silent to any permanent or temporary opening. Accordingly, Applicant's arguments regarding claims 16-22 are deemed non-persuasive.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is (571) 271-4524. The examiner can normally be reached Mon-Fri from 8:30am to 5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Allen Ostrager can be reached at (571) 272-4521. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SSelf
November 29, 2004



ALLEN OSTRAGER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700